

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: National Health Investors)
Dist. 5, Map 103L, Group B, Control Map 103L,) Dickson County
Parcels 2.00, 2.01, 3.00 & 3.01)
Commercial Property)
Tax Year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued in the aggregate as follows:¹

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$1,052,700 | \$7,610,900 | \$8,663,600 | \$3,398,120 |

The values allocated to each parcel are set forth in exhibit A.

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 3, 2008 in Charlotte, Tennessee. The taxpayer was represented by registered agent Charles W. Duggan. The assessor of property, Gail Wren, represented herself and was assisted by Joe Griffin, RES, TMA, the regional appraisal supervisor for the Division of Property Assessments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 191 bed skilled nursing facility located at 812 N. Charlotte Street in Dickson, Tennessee. Subject facility was originally constructed in 1966 with additional rooms added in 1981 and 1989. Although licensed for 191 beds, the facility has only 112 rooms. The majority of residents share semi-private rooms.

The taxpayer contended that subject property should be valued at \$6,127,212-\$6,740,758. In support of this position, the cost approach and two comparable sales were introduced into evidence.

With respect to the cost approach, Mr. Duggan maintained that under Marshall & Swift ("M & S") subject property is properly classified as a Class C Convalescent Hospital with a quality rating between "average" and "above-average." Mr. Duggan first introduced a cost approach using a M & S Class C - Average classification which resulted in a value indication of \$6,740,758. Mr. Duggan then introduced a cost approach using a M & S Class C – Above Average classification which resulted in a value indication of \$6,740,758. In both cases, Mr. Duggan divided the improvements into three sections due to their different construction dates. This resulted in effective ages of 17, 25 and 40 years and a total of 45.2% depreciation for all sections.

¹ Parcel 2.00 and 2.01 are improved parcels subclassified commercially. Parcel 3.00 and 3.01 consist of excess land subclassified residentially.

Mr. Duggan asserted that the value indications arrived at by the cost approach are supported by the two sales discussed in his report. The first sale involved the nearby 70 bed Dickson Healthcare Center which sold on July 17, 2005 for \$2,275,000 or \$32,500 per bed. Mr. Duggan contended that this facility is quite comparable to the subject and supports a value indication of \$6,207,500 ($191 \times \$32,500$). The second transaction discussed by Mr. Duggan was the August 11, 2003 sale of an admittedly inferior 75 bed skilled nursing facility in Palmyra, Tennessee for \$1,730,000 or \$23,067 per bed.

The assessor contended that subject property should remain valued at \$8,663,600. In support of this position, the testimony and written analysis of Mr. Griffin was offered into evidence. Essentially, Mr. Griffin introduced into evidence cost and income approaches which he argued support value indications of \$9,102,680 and \$11,749,600 respectively. Both approaches were actually prepared by Robert Spencer, the area manager for the Division of Property Assessments. Mr. Spencer was not present at the hearing.

The cost approach prepared by Mr. Spencer differed from Mr. Duggan's cost approaches in three key respects. First, Mr. Spencer valued the improvements as a whole rather than in sections. Second, Mr. Spencer's cost approach assumed 20% accrued depreciation. Third, Mr. Spencer classified subject property as an "above average" Class C Convalescent Hospital.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$6,500,000 based upon Mr. Duggan's analysis.

The administrative judge finds that Mr. Duggan documented the bases for each of his assumptions. The administrative judge finds that Mr. Duggan also explained in detail why he disagreed with Mr. Spencer's cost and income approaches.

The administrative judge finds that the assessor's case was based entirely on Mr. Spencer's analysis, but Mr. Spencer was not present to testify or undergo cross-examination. The administrative judge finds that the State Board of Equalization typically gives no weight to even full-blown appraisal reports when the appraiser is not present and his or her assumptions have been challenged. See the oft-cited case of *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and

be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2. As previously noted, Mr. Duggan challenged many of Mr. Spencer's key assumptions. Absent Mr. Spencer's testimony, the administrative judge has no choice except to assume that Mr. Duggan's criticisms are valid.

ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit B are hereby adopted for tax year 2007:

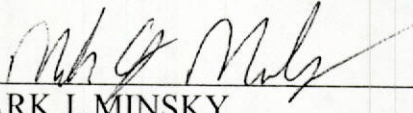
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 11th day of March, 2008.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Charles W. Duggan
Gail Wren, Assessor of Property